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Brad.Brian@mto.com
2 LUIS LI (CA Bar No. 156081, *pro hac vice*)
Luis.Li@mto.com
3 TRUC T. DO (CA Bar No. 191845, *pro hac vice*)
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4 MUNGER, TOLLES & OLSON LLP
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5 Los Angeles, CA 90071-1560
Telephone: (213) 683-9100

6 THOMAS K. KELLY (AZ Bar No. 012025)
7 tsKelly@kellydefense.com
425 E. Gurley
8 Prescott, Arizona 86301
Telephone: (928) 445-5484

9 Attorneys for Defendant JAMES ARTHUR RAY

10
11 SUPERIOR COURT OF STATE OF ARIZONA
12 COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 JAMES ARTHUR RAY,

17 Defendant.

CASE NO. VCR1300CR201080049

**DECLARATION OF TRUC T. DO IN
SUPPORT OF DEFENDANT JAMES
ARTHUR RAY'S OPPOSITION TO
MOTION TO QUASH SUBPOENAS
DUCES TECUM**

2010 APR -8 PM 4:49 ✓
JEANNE X. S. CLENN
BY: S. KELBAUGH

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1 5. To date, none of the subpoenaed parties has contacted me or my office to refuse
2 compliance with the subpoenas.

3 6. On March 19, 2010, I received a letter from Deputy County Attorney Bill Hughes,
4 in which the State accused defense counsel of "illegally prepar[ing]" the subpoenas and
5 demanded their immediate withdrawal. Additionally, Mr. Hughes suggested defense counsel had
6 committed the misdemeanor crime of knowingly sending or delivering a "document falsely
7 purporting to be an order or other document that simulates civil or criminal process," in violation
8 of Arizona Revised Statutes § 13-2814. Attached as Exhibit B is a true and correct copy of Mr.
9 Hughes' March 19, 2010 letter.

10 7. On March 22, 2010, I wrote Mr. Hughes a reply letter, in which I responded to the
11 legal merits of his demand and, to obviate any further dispute, invited the State to obtain and
12 disclose the information and materials sought in the subpoenas *duces tecum*. Attached as Exhibit
13 C is a true and correct copy of my letter dated March 22, 2010.

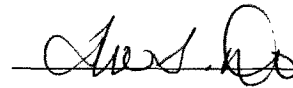
14 8. The State never responded to my letter of March 22, 2010. Instead, the State filed
15 the instant motion to quash on March 25, 2010.

16 9. On March 22, 2010, I received the State's Second Supplemental Disclosure,
17 which was forwarded to me by Mr. Kelly's office. I began reviewing this disclosure on March
18 23, 2010 and finished my review on March 26, 2010. Thereafter, it appeared to me that, with a
19 few exceptions, the State's second disclosure contained documents identical to those sought by
20 the subpoenas. I did not understand why Mr. Hughes did not simply point out that the State had
21 provided much of what the defense sought in the subpoenas, either in his initial letter of March
22 19 or in a response to my letter of March 22.

23 10. On March 30, 2010, I emailed Mr. Hughes to let him know the dispute appeared
24 moot and suggested the parties resolve this matter informally to avoid litigating an unnecessary
25 motion to quash. On March 31, 2010, Mr. Hughes offered to withdraw the motion to quash on
26 two conditions: (1) the defense agrees to take reasonable steps to withdraw any subpoena *duces*
27 *tecum* issued; and (2) the defense "agree not to utilize subpoenas *duces tecum* in the future
28 without a court order authorizing the issuance of the subpoenas." The defense agreed to the first

1 and not the second condition. On April 1, 2010, Mr. Hughes responded that the State would not
2 withdraw the motion to quash without Mr. Ray's agreement to all of its conditions. Attached as
3 Exhibit D is a true and correct copy of the email chain containing the March 30, 2010 to April 1,
4 2010 emails.

5
6 I declare under penalty of perjury under the law of the United States of America that the
7 foregoing is true and correct and that this Declaration was executed this 8th day of April 2010 at
8 Los Angeles, California.

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EXHIBIT A

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)
Brad.Brian@mto.com

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Luis.Li@mto.com

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8 Prescott, Arizona 86301
Telephone: (928) 445-5484

9 Attorneys for Defendant JAMES ARTHUR RAY

10
11 SUPERIOR COURT OF STATE OF ARIZONA
12 COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 JAMES ARTHUR RAY,

17 Defendant.

CASE NO. VCR1300CR201080049

SUBPOENA DUCES TECUM

(Yavapai County Medical Examiner)

1 THE STATE OF ARIZONA to:

2 YAVAPAI COUNTY OFFICE OF THE MEDICAL EXAMINER

3 Custodian of Records

4 980 Division Street

5 Prescott, Arizona 86301

6
7 YOU ARE HEREBY ORDERED TO PRODUCE to the Law Firm of Thomas K. Kelly at
8 425 E. Gurley, Prescott, Arizona 86301, on or before March 29, 2010, by 5:00 p.m., the
9 following items:

10 Any and all documents, including without limitations,
11 records, memoranda, raw notes, or writings of any kind,
12 related to the 10/09/09 autopsy of JAMES SHORE (09-340)
13 and KIRBY BROWN (09-339)
14

15 Disobedience of this subpoena constitutes contempt of court is so punishable.

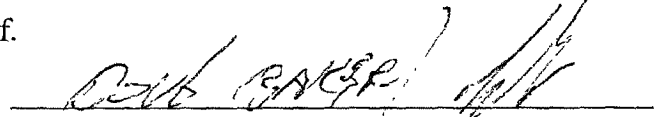
16
17 DATED: March 16, 2010

18 By: 

19 CLERK OF THE SUPERIOR COURT

20 RETURN OF SERVICE:

21 I hereby certify that I served a copy of the above subpoena on the 18 day of March, 2010,
22 upon JOSEPH LOPEZ, by showing the original to that person and
23 informing him/her of the contents thereof.

24 
25
26
27
28

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)
Brad.Brian@mtto.com

2 LUIS LI (CA Bar No. 156081, *pro hac vice*)
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Telephone: (928) 445-5484

9 Attorneys for Defendant JAMES ARTHUR RAY

10
11 SUPERIOR COURT OF STATE OF ARIZONA
12 COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 JAMES ARTHUR RAY,

17 Defendant.

CASE NO. VCR1300CR201080049

SUBPOENA DUCES TECUM

(Coconino Medical Examiner)

1 THE STATE OF ARIZONA to:

2 COCONINO OFFICE OF THE MEDICAL EXAMINER

3 Custodian of Records

4 2500 North Fort Valley Road

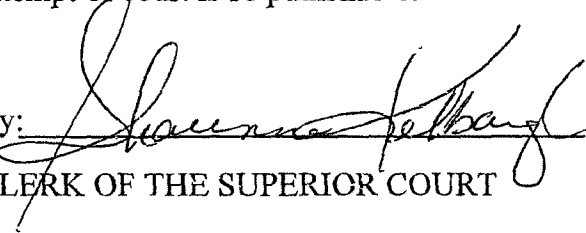
5 Flagstaff, Arizona 86001

6
7 YOU ARE HEREBY ORDERED TO PRODUCE to the Law Firm of Thomas K. Kelly at
8 425 E. Gurley, Prescott, Arizona 86301, on or before March 29, 2010, by 5:00 p.m., the
9 following items:

10 Any and all documents, including without limitations,
11 records, memoranda, raw notes, or writings of any kind,
12 related to the 10/19/09 autopsy of LIZBETH MARIE
13 NEUMAN (09-446).

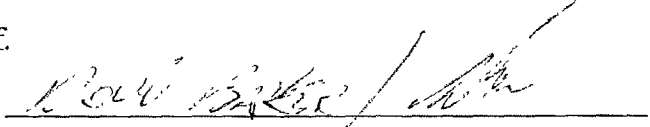
14
15 Disobedience of this subpoena constitutes contempt of court is so punishable.

16
17 DATED: March 16, 2010

18 By: 
19 CLERK OF THE SUPERIOR COURT

20
21 RETURN OF SERVICE:

22 I hereby certify that I served a copy of the above subpoena on the 19 day of March, 2010,
23 upon YASMINA SEELY, by showing the original to that person and
24 informing him/her of the contents thereof.

25 
26
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28

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Brad.Brian@mto.com

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9 Attorneys for Defendant JAMES ARTHUR RAY

10
11 SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

12 STATE OF ARIZONA,

13 Plaintiff,

14 vs.

15 JAMES ARTHUR RAY,

16 Defendant.

CASE NO. VCR1300CR201080049

SUBPOENA DUCES TECUM

(Sedona Medical Center)

1 THE STATE OF ARIZONA to:

2 SEDONA MEDICAL CENTER

3 Custodian of Records

4 3700 West Highway 89A

5 Sedona, Arizona 86336

6
7 YOU ARE HEREBY ORDERED TO PRODUCE to the Law Firm of Thomas K. Kelly at
8 425 E. Gurley, Prescott, Arizona 86301, on or before March 29, 2010, by 5:00 p.m., the
9 following items:

10 Any and all documents, including without limitations,
11 records, memoranda, notes, or writings of any kind, related to
12 the 10/08/09 admission, treatment, and discharge of
13 SANDRA ANDRETTI, KIM BRINKLEY, ROBERT
14 GRAIN, AND TERESA GRAIN.

15
16 Disobedience of this subpoena constitutes contempt of court is so punishable.

17
18 DATED: March 16, 2010

19 By: 
20 CLERK OF THE SUPERIOR COURT

21 RETURN OF SERVICE:

22 I hereby certify that I served a copy of the above subpoena on the ____ day of March, 2010,
23 upon _____, by showing the original to that person and
24 informing him/her of the contents thereof.

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)

Brad.Brian@mto.com

2 LUIS LI (CA Bar No. 156081, *pro hac vice*)

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6 THOMAS K. KELLY (AZ Bar No. 012025)

7 tskelly@kellydefense.com

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8 Prescott, Arizona 86301

Telephone: (928) 445-5484

9 Attorneys for Defendant JAMES ARTHUR RAY

10
11 SUPERIOR COURT OF STATE OF ARIZONA
12 COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 JAMES ARTHUR RAY,

17 Defendant.

CASE NO. VCR1300CR201080049

SUBPOENA DUCES TECUM

(Flagstaff Medical Center)

1 THE STATE OF ARIZONA to:

2 FLAGSTAFF MEDICAL CENTER

3 Custodian of Records

4 1200 N. Beaver Street

5 Flagstaff, Arizona 86001

6
7 YOU ARE HEREBY ORDERED TO PRODUCE to the Law Firm of Thomas K. Kelly at
8 425 E. Gurley, Prescott, Arizona 86301, on or before March 29, 2010, by 5:00 p.m., the
9 following items:

10 Any and all documents, including without limitations,
11 records, memoranda, notes, or writings of any kind, related to
12 the 10/08/09 admission, treatment, and discharge of
13 LIZBETH MARIE NEUMAN, MELINDA MARTIN,
14 MARTA REIS, STEPHEN RAY, AND TERESITA WONG.

15
16 Disobedience of this subpoena constitutes contempt of court is so punishable.

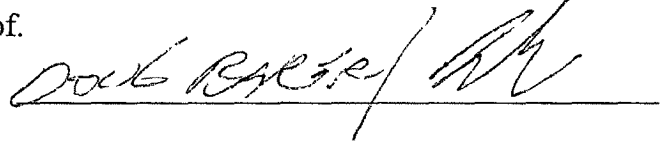
17
18 DATED: March 16, 2010

19 By: 

20 CLERK OF THE SUPERIOR COURT

21 RETURN OF SERVICE:

22 I hereby certify that I served a copy of the above subpoena on the 19th day of March, 2010,
23 upon BELITA CAWSON, by showing the original to that person and
24 informing him/her of the contents thereof.

25 
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28

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)
Brad.Brian@mto.com

2 LUIS LI (CA Bar No. 156081, *pro hac vice*)
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7 tskelly@kellydefense.com
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8 Prescott, Arizona 86301
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9 Attorneys for Defendant JAMES ARTHUR RAY

10
11 SUPERIOR COURT OF STATE OF ARIZONA
12 COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 JAMES ARTHUR RAY,

17 Defendant.

CASE NO. VCR1300CR201080049

SUBPOENA DUCES TECUM

(Verde Valley Medical Center)

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1 THE STATE OF ARIZONA to:

2 VERDE VALLEY MEDICAL CENTER

3 Custodian of Records

4 269 S. Candy Lane

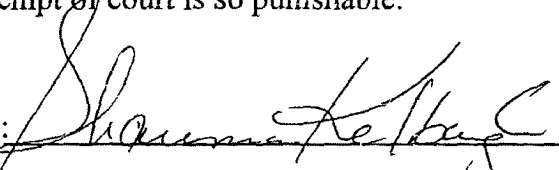
5 Cottonwood, Arizona 86326

6
7 YOU ARE HEREBY ORDERED TO PRODUCE to the Law Firm of Thomas K. Kelly at
8 425 E. Gurley, Prescott, Arizona 86301, on or before March 29, 2010, by 5:00 p.m., the
9 following items:

10 Any and all documents, including without limitations,
11 records, memoranda, notes, or writings of any kind, related to
12 the 10/08/09 admission, treatment, and discharge of JAMES
13 SHORE, KIRBY BROWN, LINDA ANDRESANO,
14 KRISTINA BIVENS, LOU CACI, AMI GRIMES, DENNIS
15 MEHRAVAR, MELISSA A. PHILLIPS, BRANDY
16 RAINEY, SEAN RONAN, and LINNETTE VEGUILLA.

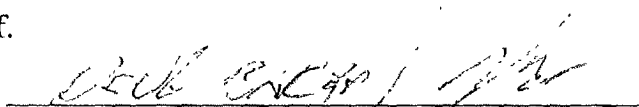
17
18 Disobedience of this subpoena constitutes contempt of court is so punishable.

19
20 DATED: March 16, 2010

21 By: 
22 CLERK OF THE SUPERIOR COURT

23 RETURN OF SERVICE:

24 I hereby certify that I served a copy of the above subpoena on the 13 day of March, 2010,
25 upon JENNIFER MOORE, by showing the original to that person and
26 informing him/her of the contents thereof.

27 
28

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)
Brad.Brian@mto.com

2 LUIS LI (CA Bar No. 156081, *pro hac vice*)
Luis.Li@mto.com

3 TRUC T. DO (CA Bar No. 191845, *pro hac vice*)
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5 Los Angeles, CA 90071-1560
Telephone: (213) 683-9100

6 THOMAS K. KELLY (AZ Bar No. 012025)
7 tskelly@kellydefense.com
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8 Prescott, Arizona 86301
Telephone: (928) 445-5484

9 Attorneys for Defendant JAMES ARTHUR RAY

10
11 SUPERIOR COURT OF STATE OF ARIZONA
12 COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 JAMES ARTHUR RAY,

17 Defendant.

CASE NO. VCR1300CR201080049

SUBPOENA DUCES TECUM

(Sedona Fire District)

1 THE STATE OF ARIZONA to:

2 SEDONA FIRE DISTRICT

3 Custodian of Records

4 2860 Southwest Drive

5 Sedona, Arizona 86336

6 YOU ARE HEREBY ORDERED TO PRODUCE to the Law Firm of Thomas K. Kelly at
7 425 E. Gurley, Prescott, Arizona 86301, on or before March 29, 2010, by 5:00 p.m., the
8 following items:

9 Any and all documents, including without limitations,
10 records, memoranda, notes, or writings of any kind, related to
11 the evaluation, examination and/or treatment of any person in
12 connection with Yavapai County Sheriff's Office Incident
13 No. 09-04025 of 10/08/09 at 13850 Angel Valley Road, off
14 Highway 89A, in Sedona, Arizona.

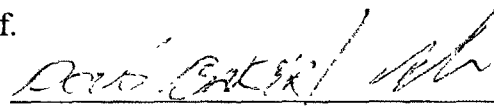
15 Disobedience of this subpoena constitutes contempt of court is so punishable.

16
17 DATED: March 16, 2010

18 By: 
19 CLERK OF THE SUPERIOR COURT
20

21 RETURN OF SERVICE:

22 I hereby certify that I served a copy of the above subpoena on the 19 day of March, 2010,
23 upon ALIA DUFOUR, by showing the original to that person and
24 informing him/her of the contents thereof.

25 
26
27
28

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)

Brad.Brian@mto.com

2 LUIS LI (CA Bar No. 156081, *pro hac vice*)

Luis.Li@mto.com

3 TRUC T. DO (CA Bar No. 191845, *pro hac vice*)

Truc.Do@mto.com

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7 tskelly@kellydefense.com

425 E. Gurley

8 Prescott, Arizona 86301

Telephone: (928) 445-5484

9 Attorneys for Defendant JAMES ARTHUR RAY

10 SUPERIOR COURT OF STATE OF ARIZONA

11 COUNTY OF YAVAPAI

12 STATE OF ARIZONA,

13 Plaintiff,

14 vs.

15 JAMES ARTHUR RAY,

16 Defendant.

CASE NO. VCR1300CR201080049

SUBPOENA DUCES TECUM

(Cottonwood Fire Department)

1 THE STATE OF ARIZONA to:

2 COTTONWOOD FIRE DEPARTMENT

3 Custodian of Records

4 191 S. 6th Street

5 Cottonwood, Arizona 86326

6

7 YOU ARE HEREBY ORDERED TO PRODUCE to the Law Firm of Thomas K. Kelly at
8 425 E. Gurley, Prescott, Arizona 86301, on or before March 29, 2010, by 5:00 p.m., the
9 following items:

10 Any and all documents, including without limitations,
11 records, memoranda, raw notes, or writings of any kind,
12 related to the evaluation, examination and/or treatment of any
13 person in connection with Yavapai County Sheriff's Office
14 Incident No. 09-04025 of 10/08/09 at 13850 Angel Valley
15 Road, off Highway 89A, in Sedona, Arizona.

16

17 Disobedience of this subpoena constitutes contempt of court is so punishable.

18

19 DATED: March 16, 2010

20

By: Shawn Kelbaugh
CLERK OF THE SUPERIOR COURT

21

22 RETURN OF SERVICE:

23 I hereby certify that I served a copy of the above subpoena on the ____ day of March, 2010,
24 upon CHIEF MIKE GIBSON, by showing the original to that person and
25 informing him/her of the contents thereof.

26

Dick Baker / [Signature]

27

28

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)

Brad.Brian@mto.com

2 LUIS LI (CA Bar No. 156081, *pro hac vice*)

Luis.Li@mto.com

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8 Prescott, Arizona 86301

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9 Attorneys for Defendant JAMES ARTHUR RAY

10
11 SUPERIOR COURT OF STATE OF ARIZONA
12 COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 JAMES ARTHUR RAY,

17 Defendant.

CASE NO. VCR1300CR201080049

SUBPOENA DUCES TECUM

(Verde Valley Fire District)

1 THE STATE OF ARIZONA to:

2 VERDE VALLEY FIRE DISTRICT

3 Custodian of Records

4 2700 E. Godard Road

5 Cottonwood, Arizona 86326

6
7 YOU ARE HEREBY ORDERED TO PRODUCE to the Law Firm of Thomas K. Kelly at
8 425 E. Gurley, Prescott, Arizona 86301, on or before March 29, 2010, by 5:00 p.m., the
9 following items:

10 Any and all documents, including without limitations,
11 records, memoranda, raw notes, or writings of any kind,
12 related to the evaluation, examination and/or treatment of any
13 person in connection with Yavapai County Sheriff's Office
14 Incident No. 09-04025 of 10/08/09 at 13850 Angel Valley
15 Road, off Highway 89A, in Sedona, Arizona.
16

17 Disobedience of this subpoena constitutes contempt of court is so punishable.

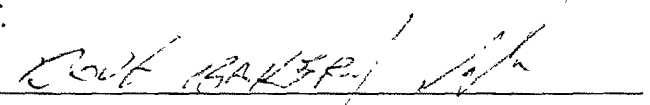
18
19 DATED: March 16, 2010

By: 

20 CLERK OF THE SUPERIOR COURT
21

22 RETURN OF SERVICE:

23 I hereby certify that I served a copy of the above subpoena on the ¹⁷15 day of March, 2010,
24 upon JENNIFER SKILLMAN, by showing the original to that person and
25 informing him/her of the contents thereof.

26 
27
28

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)
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Telephone: (928) 445-5484

9 Attorneys for Defendant JAMES ARTHUR RAY

10
11 SUPERIOR COURT OF STATE OF ARIZONA
12 COUNTY OF YAVAPAI

13 STATE OF ARIZONA,
14 Plaintiff,
15 vs.
16 JAMES ARTHUR RAY,
17 Defendant.
18
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CASE NO. VCR1300CR201080049

SUBPOENA DUCES TECUM
(Guardian Air Helicopter)

1 THE STATE OF ARIZONA to:

2 GUARDIAN AIR HELICOPTER

3 Custodian of Records

4 6639 S. Piper Lane

5 Flagstaff, Arizona 86001

6
7 YOU ARE HEREBY ORDERED TO PRODUCE to the Law Firm of Thomas K. Kelly
8 at 425 E. Gurley, Prescott, Arizona 86301, on or before March 29, 2010, by 5:00 p.m.,
9 the following items:

10 Any and all documents, including without limitations,
11 records, memoranda, raw notes, or writings of any kind,
12 related to the evaluation, examination, treatment and/or
13 transportation of any person in connection with Yavapai
14 County Sheriff's Office Incident No. 09-04025 of 10/08/09 at
15 13850 Angel Valley Road, off Highway 89A, in Sedona,
16 Arizona.

17
18 Disobedience of this subpoena constitutes contempt of court is so punishable.

19
20 DATED: March 16, 2010

21 By: Sharon Kelbaugh
22 CLERK OF THE SUPERIOR COURT

23 RETURN OF SERVICE:

24 I hereby certify that I served a copy of the above subpoena on the 17 day of March, 2010,
25 upon RE-16 DA/15m, by showing the original to that person and
26 informing him/her of the contents thereof.

27 DOLB BAKER
28

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)
Brad.Brian@mto.com

2 LUIS LI (CA Bar No. 156081, *pro hac vice*)
Luis.Li@mto.com

3 TRUC T. DO (CA Bar No. 191845, *pro hac vice*)
Truc.Do@mto.com

4 MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, Thirty-Fifth Floor
5 Los Angeles, CA 90071-1560
Telephone: (213) 683-9100

6 THOMAS K. KELLY (AZ Bar No. 012025)
7 tskelly@kellydefense.com
425 E. Gurley
8 Prescott, Arizona 86301
Telephone: (928) 445-5484

9 Attorneys for Defendant JAMES ARTHUR RAY

10
11 SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

12 STATE OF ARIZONA,

13 Plaintiff,

14 vs.

15 JAMES ARTHUR RAY,

16 Defendant.

CASE NO. VCR1300CR201080049

SUBPOENA DUCES TECUM

(Verde Valley Ambulance Company)

1 THE STATE OF ARIZONA to:

2 VERDE VALLEY AMBULANCE COMPANY

3 Custodian of Records

4 345 East Mingus Avenue

5 Cottonwood, Arizona 86326-3670

6
7 YOU ARE HEREBY ORDERED TO PRODUCE to the Law Firm of Thomas K. Kelly
8 at 425 E. Gurley, Prescott, Arizona 86301, on or before March 29, 2010, by 5:00 p.m.,
9 the following items:

10 Any and all documents, including without limitations,
11 records, memoranda, raw notes, or writings of any kind,
12 related to the evaluation, examination, treatment and/or
13 transportation of any person in connection with Yavapai
14 County Sheriff's Office Incident No. 09-04025 of 10/08/09 at
15 13850 Angel Valley Road, off Highway 89A, in Sedona,
16 Arizona.

17
18 Disobedience of this subpoena constitutes contempt of court is so punishable.

19
20 DATED: March 16, 2010

By: 

CLERK OF THE SUPERIOR COURT

21
22
23 RETURN OF SERVICE:

24 I hereby certify that I served a copy of the above subpoena on the 18 day of March, 2010,
25 upon KIM MOORE, by showing the original to that person and
26 informing him/her of the contents thereof.

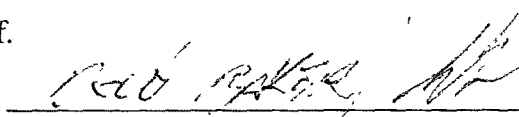
27 
28

EXHIBIT B



Yavapai County Attorney

255 East Gurley Street
Prescott, AZ 86301
(928) 771-3344 (Criminal)
(928) 771-3338 (Civil)
Facsimile (928) 771-3110

SHEILA POLK
Yavapai County Attorney

March 19, 2010

VIA FACSIMILE (213/ 683-4005 & 928/ 445-0414) & US MAIL

Luis Li, Esq.
Munger, Tolles & Olson L.L.P.
355 South Grand Avenue
Los Angeles, CA 90071-1560

Thomas Kelly, Esq.
425 East Gurley Street
Prescott, AZ 86301

Rc: State v. James Ray

Dear Luis & Tom:

We recently became aware that you had subpoenas *duces tecum* issued in connection with the State v. James Arthur Ray case. These subpoenas were illegally prepared and delivered.

A.R.S. §13-4071 permits a defendant to obtain a subpoena only for the appearance of a witness before the court. This statute specifically forbids the use of such a subpoena to procure discovery in a criminal case. Arizona Rules of Criminal Procedure Rule 15.1 governs disclosure of discoverable items. It is well settled that a defendant may not use a subpoena to circumvent Rule 15.1. See *Carpenter v. Superior Court*, 176 Ariz. 486, 862 P.2d 246 (App. 1993).

Arizona law prohibits simulating legal process. See A.R.S. § 13-2814. Please immediately withdraw the subpoenas *duces tecum* that you have improperly caused to be issued and delivered.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill R. Hughes", is written over a horizontal line.

Bill R. Hughes
Deputy County Attorney

BRH/me

EXHIBIT C

MUNGER, TOLLES & OLSON LLP

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THIRTY-FIFTH FLOOR
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560 MISSION STREET
SAN FRANCISCO, CALIFORNIA 94105-2907
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March 22, 2010

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RONALD L. OLSON
RICHARD S. VOLPERT
DENNIS C. BROWN
ROBERT E. DENHAM
JEFFREY I. WEINBERGER
CARY B. LERMAN
CHARLES D. SIEGAL
RONALD K. MEYER
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PATRICK J. CAFFERTY JR.
JAY M. FUJITANI
O. MALLEY M. MILLER
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MARC T.G. DWORSKY
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STUART N. SENATOR
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CARL H. MODR
DAVID M. ROSENZWEIG
DAVID H. FRY
LISA J. GEMSKY
MALCOLM A. HEINICKE
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TAMERLIN J. GODLEY
JAMES C. RUTEN
J. MARTIN WILLHITE
RICHARD ST. JOHN
ROHIT K. SINGLA
LUIS LI
CAROLYN HOECKER LUEDTKE
C. DAVID LEE
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FRED A. ROWLEY JR.
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BLANCA FROMM YOUNG
RANDALL G. SOMMER
MARIA SEFERIAN
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ROSEMARIE T. RING
JOSEPH J. YBARRA
TOOD J. ROSEN
SUSAN R. SZABO
NATALIE PAGÉS STONE

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DAVID C. YANG
WILLIAM E. CAND
HENRY E. DRREN

WESLEY SHIH
JACOB S. KREILKAMP
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ERIC P. TUTTLE
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YUVAL MILLER
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ZACHARY A. BRAY
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ADAM R. LAWTON
PETER C. REHN
RACHEL L. STEIN
AVI BRAZ
PUNEET K. SANDHU
IAN J. MILLER
MARINA A. TORRES
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(1922-2008)

WRITER'S DIRECT LINE
(213) 683-9154
(213) 683-5154 FAX
True Doc@mto.com

VIA EMAIL

Bill Hughes
Yavapai County Attorney's Office
255 East Gurley Street
Prescott, Arizona 86301

Re: State v. James Arthur Ray

Dear Bill:

I write in response to your letter demanding that we withdraw the subpoenas *duces tecum* issued by the Court on March 16, 2010 to various hospitals, emergency responders, and fire departments who treated participants in the October 2009 sweat lodge and the coroner departments which conducted the autopsies of the decedents. The State not only lacks standing to make such a demand, but I believe you have misinterpreted Arizona law regarding a defendant's due process right to conduct an independent pretrial investigation of the charges for which he stands accused.

First, the subpoenas *duces tecum* are directed to third parties who are neither State agents nor governmental agencies under the prosecution's direction or control. For that reason alone, the State does not have standing to move to quash the subpoenas, let alone demand their withdrawal, and the defense is not required to request the information sought from the State under Arizona Rules of Criminal Procedure 15.1.

Rule 15.1 governs disclosure only of material and information that are in the possession or control of the prosecutor and its staff, any law enforcement agency which has

Bill Hughes

March 22, 2010

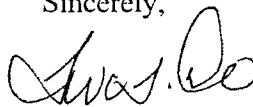
Page 2

participated in the investigation of the case and that is under the prosecutor's direction or control. or "any other person who has participated in the investigation or evaluation of the case and who is under the prosecution's direction or control." Ariz. Rules of Crim. Proc. 15.1(f) (emphasis added). The hospitals, emergency responders, and fire departments treated participants not for the purpose of aiding the State in the investigation or evaluation of its case, but because the participants needed medical assistance. Moreover, we do not believe hospitals, emergency responders, fire departments, or coroners, including the Coconino Medical Examiner which is outside Yavapai County, are under the prosecution's direction or control. Thus, Rule 15.1 does not require the defense to seek the requested material and information from the State.

Your reliance on *Carpenter v. Superior Court*, 176 Ariz. 486 (1993) is also misplaced. The court in *Carpenter* held that a defendant may not subpoena police reports from a police department, because "a law enforcement agency investigating a criminal action operates as an arm of the prosecutor for purposes of obtaining information that falls within the required disclosure provisions of Rule 15.1." *Carpenter*, 176 Ariz. at 490. Indeed, while the court of appeals affirmed the trial court's order quashing the subpoena *duces tecum* directed at the police department, it vacated the trial court's order precluding the defense "from directing any subpoena *duces tecum* to any third party." *Id.* at 488. Rule 15.1(g), formerly Rule 15.1(e), specifically recognizes a defendant's right to discover evidence material to the case that are in the possession of "a private party or governmental agency not subject to the prosecutor's control." *Id.* at 489. We intend to make the appropriate motion under Rule 15.1(g) only if we are "unable without undue hardship to obtain the substantial equivalent by other means." Ariz. Rules of Crim. Proc. 15.1(g). However, if the State is offering to obtain and disclose the information and material sought, the defense would gladly accept.

Lastly, I believe the State's accusation that defense counsel has committed the misdemeanor crime of simulating legal process, in violation of Arizona Revised Statutes § 13-2814, is simply unwarranted and injects unnecessary acrimony into this litigation. You are well-aware that the Court approved and issued the subpoenas on March 16, 2010. For the State to suggest that defense counsel knowingly sent or delivered a "document falsely purporting to be an order or other document that simulates civil or criminal process," Ariz. Rev. Stat. § 13-2814, is beyond careless.

Sincerely,



Truc T. Do

Do, Truc

From: Bill Hughes [Bill Hughes@co.yavapai.az.us]
Sent: Thursday, April 01, 2010 3:18 PM
To: Do, Truc
Cc: Li, Luis, 'tkkelly@thomaskellypc.com', Sheila Polk
Subject: RE: State's Motion to Quash

Truc, I'm sorry we weren't able to reach an agreement on this issue. Without an agreement regarding future use of subpoenas *duces tecum*, withdrawing the motion will only temporarily forestall this issue from reoccurring. Although the State will not withdraw the motion, we will continue our efforts to obtain and disclose the medical records discussed in my 3/31/2010 email.

Bill Hughes

From: Do, Truc [mailto:truc.do@mto.com]
Sent: Thursday, April 01, 2010 11:48 AM
To: Bill Hughes
Subject: FW: State's Motion to Quash

Hi Bill,

Can we reach a decision on this issue today? Thanks much

Truc

From: Do, Truc
Sent: Wednesday, March 31, 2010 4:47 PM
To: 'Bill Hughes'; Sheila Polk
Cc: Li, Luis; 'tkkelly@thomaskellypc.com'; Brian, Brad
Subject: RE: State's Motion to Quash

Bill,

Thank you for your response. Based on your representations, it would appear that we have received medical records from the State that are co-extensive with the information sought in the March 16, 2010 subpoenas *duces tecum*. For that reason alone, I think we agree the issue before us is moot and, in the interest of conserving judicial economy, the defense agrees to take reasonable steps to withdraw the March 16, 2010 subpoenas in conjunction with the State's withdrawal of its motion to quash. Based on your representations, we will also rely on the State to obtain and disclose the medical records of any participant treated as a result of his/her participation in the October 8, 2009 sweat lodge.

However, we cannot agree to condition this resolution on a future bar of all subpoenas *duces tecum* without a court order authorizing the issuance of the subpoenas. For one thing, we strongly disagree with you that these subpoenas are in any way improper. In any event, that is not the issue before the Court. As you know, the Court of Appeals in *Carpenter* vacated the trial court's blanket order precluding the defense "from directing any subpoena *duces tecum* to any third party" as overbroad. *Carpenter*, 176 Ariz. 486 at 488 (1993).

4/8/2010

Let's simply agree this current dispute is moot so that both parties can move on to the merits of the case. Thanks much.

Regards,

Truc

From: Bill Hughes [mailto:Bill.Hughes@co.yavapai.az.us]
Sent: Wednesday, March 31, 2010 3:07 PM
To: Do, Truc; Sheila Polk
Cc: Li, Luis; 'tkkelly@thomaskkellypc.com'
Subject: RE: State's Motion to Quash

Truc,

The State has disclosed to you all of the medical records we have received to date. We will continue to disclose any new records as we receive them.

We will contact Rosemary Senjem, Teresa Grain, Melinda Martin, and Marta Reis and inquire whether they will give us releases for their medical records for treatment pertaining to the sweat lodge incident at the Verde Valley Medical Center, Sedona Medical Center, or Flagstaff Medical Center. Provided we receive the releases, we will obtain and disclose any such medical records.

We believe there may be additional medical records pertaining to Elizabeth Neuman's treatment. We are seeking a medical records release for her remaining medical records, and will provide you with copies of any additional Elizabeth Neuman medical records when we receive them.

Regarding the motion to quash, we will withdraw the motion on the following conditions. 1) you agree to take reasonable steps to withdraw any subpoena *duces tecum* the defense caused to be issued; and 2) you agree not to utilize subpoenas *duces tecum* in the future without a court order authorizing the issuance of the subpoenas. Please advise if this is acceptable.

Thank you,

Bill Hughes

From: Bill Hughes
Sent: Wednesday, March 31, 2010 9:49 AM
To: 'Do, Truc'; Sheila Polk
Cc: Li, Luis; tkkelly@thomaskkellypc.com
Subject: RE: State's Motion to Quash

Truc, I'll let you know our response by the end of today.

Bill Hughes

From: Do, Truc [mailto:truc.do@mto.com]
Sent: Tuesday, March 30, 2010 1:01 PM
To: Bill Hughes; Sheila Polk
Cc: Li, Luis; tkkelly@thomaskkellypc.com
Subject: State's Motion to Quash

4/8/2010

Bill,

I completed my review of the State's Second Supplemental Disclosure on March 26, 2010, which I was unaware of and did not receive until March 22, 2010. With a few exceptions, it appears that the State's disclosure is co-extensive with the information sought in the subpoenas *duces tecum* issued by the Court on March 16, 2010. The State did not provide medical records of Rosemary Senjem, Teresa Grain, Melinda Martin, and Marta Reis --- who were also treated at Verde Valley Medical Center, Sedona Medical Center, or Flagstaff Medical Center according to YCSO's reports. If you will verify the medical records disclosed to date are complete and inquire as to the existence of the medical records for these four participants, the dispute seems moot. Do you intend to pursue the motion the quash or can we resolve this without taking up the Court's time?

Regards,

Truc

Truc T. Do : Munger, Tolles & Olson LLP

355 South Grand Avenue | Los Angeles, CA 90071

Tel: 213.683.9154 | Fax: 213.683.5154 | truc.do@mto.com | www.mto.com

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4/8/2010